

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	8:08CR92
	)	
v.	)	
	)	
ADAM SCHMID,	)	ORDER
	)	
Defendant.	)	
_____	)	

This matter is before the court on the defendant's motion to vacate under [28 U.S.C. § 2255](#), Filing No. [73](#). Under the *Rules Governing Section 2255 Proceedings for the United States District Courts* ("2255 Rules"), the court must perform an initial review of the defendant's § 2255 motion. See [28 U.S.C. § 2255](#), Rule 4(b). The rules provide that unless "it plainly appears from the face of the motion and any annexed exhibits and the prior proceedings in the case that the movant is not entitled to relief in the district court," the court must order the United States Attorney to respond to the motion. *Id.*

The defendant entered a plea of guilty to a charge of possession of child pornography, a crime that carries a maximum sentence of ten years for a first offender and no mandatory minimum sentence. Pursuant to a binding plea agreement under Fed. R. Crim. P. 11(c)(1)(C), the parties agreed to a sentence of sixty months. The court accepted the binding plea agreement and sentenced the defendant to sixty months.

In his § 2255 motion, the defendant alleges that he received ineffective assistance of counsel in connection with the negotiation of his guilty plea and in his sentencing. On initial review, the court finds that "it does not plainly appear that the defendant is entitled to no relief," and that the government should be required to answer. On receipt of the

government's answer, the court will determine (a) whether to order the parties to submit briefs on the merits, so that the defendant's claims may be resolved on the basis of the record and briefs, or (b) whether an evidentiary hearing is required. See 2255 Rule 8(a).

IT IS ORDERED:

1. On initial review, the court finds that summary dismissal is not appropriate;
2. The United States shall file an answer to the defendant's § 2255 motion within 21 days of the date of this order.

DATED this 9<sup>th</sup> day of June, 2011.

BY THE COURT:

s/Joseph F. Bataillon  
Chief United States District Judge

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